

REMARKS

In the Office Action, the Examiner has required restriction under 35 U.S.C. §121 to one of the following inventions: (I) claims 1-4, 10-19 and 28-40; and (II) claims 5-9, 20-27 and 41-62. This requirement is respectfully traversed.

In the Office Action, the inventions are stated as purportedly being distinct from each other as related as process and apparatus for its practice. To support this contention, the Examiner states that the process of Invention I can be practiced by hand. The classifications for Inventions I and II set forth in the Office Action are purportedly class 600, subclass 365 and class 600, subclass 300, respectively.

First, subclass 365 of class 600 (surgery) is a sub-sub-sub-class relating to glucose monitoring under the sub-sub-class 309 for measuring/detecting nonradioactive constituent of body liquid by means placed against or in body throughout the test. Subclass 309 is a sub-sub-class under subclass 300 relating to diagnostic testing in general. Thus, subclass 365 is not a different subclass but is within subclass 300, and both Inventions I and II are searchable within subclass 365 as well as subclass 300. Accordingly, it should not constitute a serious burden on the Examiner to search and examine all of the claims identified as Inventions I and II.

Second, there is a significant degree of common subject matter in both inventions identified in the Office Action. The limitations in claims 1-4, 10-19 and 28-40 identified as Invention I essentially correspond, respectively, to the limitations of claims 5-9, 20-27 and 41-62 identified as Invention II except for their formatting as needed for a method claim, apparatus claim or computer-readable medium claim. Because of this common subject matter, the Applicant believes that it will not be a serious burden on the Examiner to search and examine all of the claims. Under MPEP §803, "[i]f the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, *even though* it includes

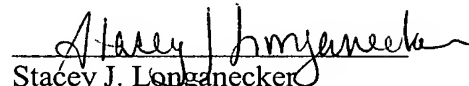
Appl. No. 10/788,475
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Reply to Office Action of March 8, 2007

claims to independent or distinct inventions" (emphasis added). In the Applicant's view, that is exactly the situation in the present case.

Should the Examiner disagree with the Applicant's position in this matter, the Applicant provisionally elects Invention II (claims 5-9, 20-27 and 41-62) for further prosecution in this application.

Early and favorable action on the merits is thus respectfully requested. Should the Examiner have any questions, she is invited to contact the undersigned at (202) 530-7370.

Respectfully Submitted,


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